

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-04-TC-145
Waterman Broadcasting Corp. of Florida, Inc.)	Facility No. 71085
Licensee of WBBH-TV)	NAL/Acct. No. 200532170013
Fort Myers, Florida)	FRN: 0001807965
)	
)	
Montclair Communications, Inc)	File No. EB-04-TC-150
Licensee of WZVN-TV)	Facility ID No. 19183
Naples, Florida)	NAL/Acct. No. 200532170014
)	FRN: 0001733518

ORDER

Adopted: March 7, 2007

Released: March 7, 2007

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau, Waterman Broadcasting Corp. of Florida, Inc. (“Waterman”) and Montclair Communications, Inc. (“Montclair”).¹ The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding whether the Stations violated section 713 of the Communications Act of 1934, as amended (the “Act”),² and section 79.2(b)(1)(i) of the Commission’s rules³ by failing to make accessible to persons with hearing disabilities emergency information that it provided aurally in its programming for WBBH-TV and WZVN-TV during Hurricane Charley, in the Fort Myers-Naples Designated Market Area during August of 2004.

2. The Enforcement Bureau, and the Stations have negotiated the terms of a Consent Decree that resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether the Stations possess the basic qualifications, including character qualifications, to remain a Commission licensee. Furthermore, we find that the Notice of Apparent

¹ Hereinafter referred to as the Stations.

² 47 U.S.C. § 613.

³ 47 C.F.R. § 79.2(b)(1)(i).

Liability⁴ issued in this proceeding is null and void.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁵ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁶ that the attached Consent Decree **IS ADOPTED** and the Notice of Apparent Liability **IS CANCELLED**.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein is terminated.

6. **IT IS FURTHER ORDERED** that copies of this order shall be sent by regular first class mail and certified mail - return receipt requested to Jonathan Blake, Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004 and Peter Tannenwald, Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, NW, Suite 200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

⁴ Waterman Broadcasting Corp. of Florida, Inc., Montclair Communications, Inc., Notice of Apparent Liability, 20 FCC Red 13534.

⁵ 47 U.S.C. § 154(i).

⁶ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and Waterman Broadcasting Corp. of Florida, Inc. (“Waterman”) and Montclair Communications, Inc. (“Montclair”)¹, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation (the “Investigation”) regarding whether the Stations complied with section 713 of the Communications Act of 1934, as amended (the “Act”),² and section 79.2(b)(1)(i) of the Commission’s rules,³ with respect to the duty to make accessible to persons with hearing disabilities emergency information that the Stations provided aurally in their programming for WBBH-TV and WZVN-TV during Hurricane Charley, in the Fort Myers-Naples Designated Market Area on August 13, 2004.

II. BACKGROUND

2. On August 13, 2004, Hurricane Charley hit Florida’s coast between Fort Myers and Punta Gorda. The Commission was made aware of allegations that the Stations failed to make some of the information on Hurricane Charley that was provided by voice accessible to persons with hearing disabilities. This failure allegedly deprived hearing impaired viewers of access to critical emergency information including evacuation orders and information on what to do to remain safe. The Bureau subsequently launched an investigation into the Stations’ broadcasts carried on WBBH-TV and WZVN-TV on August 12 and 13, 2004.

III. DEFINITIONS

3. For the Purposes of this Consent Decree, the following definitions shall apply:

¹ Hereinafter referred to as the Stations.

² 47 U.S.C. § 613.

³ 47 C.F.R. § 79.2(b)(i).

- (a) “Act” means the Communications Act of 1934, as amended;
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
- (c) “Commission” or “FCC” means the Federal Communications Commission;
- (d) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- (e) “Emergency Visual Presentation Policy” means the process and procedures developed by the Stations in an effort to ensure compliance with the Act and the Rules regarding broadcasting emergency information for the hearing impaired.
- (f) “Extended news coverage of an emergency condition” means news programming of one half hour or greater duration, other than the Stations’ regularly scheduled news programming, during which emergency information, as defined in section 79.2 of the Commission’s rules, is provided;
- (g) “Investigation” means the investigation of the Stations’ broadcasts on August 12 and 13, 2004;
- (h) “Waterman” means Waterman Broadcasting Corp. of Florida, Inc. licensee of WBBH-TV, Fort Myers, Florida, and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns;
- (i) “Montclair” means Montclair Communications, Inc. licensee of WZVN-TV, Naples, Florida, and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns;
- (j) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation;
- (k) “Parties” means Waterman, Montclair and the Bureau;
- (l) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations; and
- (m) “Stations” means Waterman and Montclair serving the Fort Myers-Naples Designated Market Area.

IV. AGREEMENT

4. The Stations agree that the Bureau has jurisdiction over them and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

5. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Investigation. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau agrees

to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, the Stations agree to the terms, conditions, and procedures contained herein.

6. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance by the Stations with the requirements of the Act and the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, the Stations do not admit or deny any non-compliance or violation of the Act or the Commission rules in connection with the matters that are the subject of this Consent Decree.

7. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Order.

8. The Parties agree that this Consent Decree shall become effective on the Effective Date and shall have the same force and effect as any other order of the Commission. Any violation of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. The Bureau agrees that it shall terminate the Investigation. The Bureau agrees that, in the absence of new material evidence, it will not on its own motion initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against the stations, based in whole or in part on the Investigation or any complaints alleging violations of section 79.2 relating to the coverage the Stations provided of Hurricane Charley during August of 2004. The Bureau agrees that, in absence of material new evidence, it will not initiate or recommend to the Commission any new proceeding, formal or informal, regarding the matters that were subject of the Investigation. The Bureau further agrees that, in the absence of material new evidence, it will not use the facts developed in this Investigation prior to the Effective Date to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion against the Stations with respect to their basic qualifications to be or remain a Commission licensee.

10. In consideration for the termination of the Investigation, the Stations will implement within thirty (30) days of the Effective Date and maintain the following Emergency Visual Presentation Policy, which will be overseen by the Stations' News Directors:

(a) It shall be the policy of Waterman to closed caption the regularly scheduled local news and emergency information set forth below. Pursuant to this policy, Waterman will contract with a reputable real-time closed captioning service provider and/or acquire a voice recognition system to provide real-time closed captioning for said regularly scheduled newscasts and emergency information presented on WBBH-TV:

(1) Monday- Friday News Broadcast at 6:00-7:00 a.m., 6:00-6:30 p.m., 11:00-11:30 p.m., and,

(2) Any "extended news coverage of an emergency condition" affecting the Fort-Myers-Naples Designated Market Areas.

(b) It shall be the policy of Montclair to closed caption the regularly scheduled local news and emergency information set forth below. Pursuant to this policy, Montclair or Waterman on behalf of Montclair will contract with a reputable real-time closed captioning service provider and/or acquire a voice recognition system to provide real-

time closed captioning for said regularly scheduled newscasts and emergency information presented on WZVN-TV:

(1) Monday- Friday News Broadcast at 6:00-6:30 p.m., 11:00-11:30 p.m., and,

(2) Any “extended news coverage of an emergency condition” affecting the Fort-Myers-Naples Designated Market Areas.

(c) It shall be the policy of the Stations to closed caption all emergency information broadcast outside a regularly scheduled newscast if such information is conveyed via the Station’s audio. However, pursuant to the Emergency Visual Presentation Policy, if captioning services are not immediately available or if captioning services cannot be immediately secured, the Stations will make the critical details of the emergency information accessible by other visual means, such as crawls, scrolls, or handwriting on a blackboard, and will continue to do so until captioning begins. In any event, captioning must be provided, as set forth above, within the first thirty (30) minutes of any “extended news coverage of an emergency condition,” consistent with the Commission’s rules and policies. Emergency information will include any information relating to an imminent or ongoing emergency, as described in Section 79.2 of the Commission’s rules, affecting the Station’s viewers that is intended to protect life, health, or property;

(d) Each Station will distribute, at least every six (6) months, the Station's Emergency Visual Presentation Policy to all employees;

(e) Each Station will incorporate the Station's Emergency Visual Presentation Policy into the Station's regular news employee training session;

(f) Pursuant to the Emergency Visual Presentation Policy, each Station will promptly commence captioning, or contact its captioning service, before or contemporaneously with any broadcast coverage of a pending or imminent emergency that endangers the Station's viewers and will make its best reasonable efforts to ensure that coverage of the emergency is captioned as soon as possible. As set forth above, captioning must be provided within the first thirty (30) minutes of any “extended news coverage of an emergency condition,” consistent with the Commission’s rules and policies. Consistent with Section 79.2 of the Commission's rules, during any time that captioning is not immediately available to caption the newscast or breaking news report, the Stations will make the critical details of the emergency information accessible by other visual means, such as crawls, scrolls, or handwriting on a blackboard;

(g) Pursuant to the Emergency Visual Presentation Policy, each Station will maintain visible postings on television monitors in the Station's newsroom that remind employees to promptly contact the Station's captioning service during emergency events, and such postings will include the phone number for that service;

(h) Each Station will maintain a labeled speed-dial button to the Station’s captioning service on telephones on the Station’s newsroom assignment desk and in each respective master control;

(i) Each Station shall consult with organizations representing deaf and hard of hearing persons on a yearly basis as a part of the ongoing assessment of how the Stations are meeting the needs of their hearing impaired viewers. These consultations will include

discussions of how the Stations can best serve the needs of the hearing impaired viewers for emergency information;

(j) Each year, on or before the commencement of the hurricane season, each Station's management shall review with the Station's staff emergency procedures and processes to ensure the Stations are prepared to provide emergency information to hearing impaired viewers; and

(k) Each Station will incorporate in their Emergency Visual Presentation Policy each of the above elements, as well as others. The Stations will incorporate the Emergency Visual Presentation Policy in to their Disaster Preparedness Plan.

11. In consideration for the termination of the Investigation, and in accordance with the terms of this Consent Decree, the Stations will each make a voluntary contribution to the United States Treasury without further protest or recourse to a trial de novo in the amount of eighteen thousand dollars (\$18,000) within thirty (30) calendar days after the Effective Date. The Stations must make this payment by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania, 15251. Payment by overnight mail may be sent to Mellon Client Service, 500 Ross Street, Room 670, Pittsburgh, PA, 15262-0001, Attention: FCC Module Supervisor. Payment by wire transfer may be made to ABA Number 043000261, account number 911-6229. Please include your NAL/Acct No. in your transfer.

12. The Stations' decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

13. The Stations waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the Bureau issues an Order adopting the Consent Decree without change, addition or modification.

14. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, neither the Stations nor the FCC shall contest the continuing validity of the Consent Decree or Order. The Stations and the Commission further agree that they will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

15. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

16. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Stations do not consent), that provision will be superseded by such Commission rule or order.

17. By this Consent Decree, the Stations do not waive or alter their right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and

information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

18. The Parties agree that the requirements of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

19. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

For the Enforcement Bureau

For Waterman Broadcasting Corp. of Florida, Inc.

By: _____
Kris Anne Monteith
Chief

By: _____
Steven H. Pontius
Executive Vice President

Date

Date

For Montclair Communications, Inc.

By: _____
Lara W. Kunkler
President

Date